

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

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|----------------------------------|---|-----------------------------|
| UNITED STATES OF AMERICA, |) | CASE NO. 8:CR06CR157 |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | TENTATIVE FINDINGS |
| |) | |
| DION T. CRIBBS, |) | |
| |) | |
| Defendant. |) | |

The Court has received the Presentence Investigation Report ("PSR") and the Defendant's objections thereto (Filing No. 35). The government has adopted the PSR. (Filing No. 34.) See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The Defendant objects to ¶¶ 18 (cash found and converted) and 43 (criminal history). The objections are discussed below.

¶ 18 - Cash

Despite his plea to Count II (criminal forfeiture), the Defendant objects to the assumption that the \$500 found in the Defendant's bedroom with sandwich bags and Zig-Zag papers was obtained from the sale of cocaine. Because the agreed upon base offense level is not affected, the objection is denied.

¶ 43 - Criminal History

The PSR notes that the offense listed in ¶ 43 falls under U.S.S.G. § 4A1.2(e)(3) (offenses falling outside the applicable time period not counted), yet the PSR attributed 1 criminal history point to this offense. This offense falls outside the relevant 10-year period, and therefore a criminal history point may not be assessed. The objection is granted.

IT IS ORDERED:

1. The Defendant's Objections to the Presentence Investigation Report (Filing No. 35) are granted in part and denied in part as follows:

- a. The Defendant's objection to ¶ 18 is denied;
- b. The Defendant's objection to ¶ 43 is granted;

2. Otherwise the Court's tentative findings are that the Presentence Investigation Report is correct in all respects;

3. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

4. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final; and

5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 29th day of November, 2006.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge